

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.12.2007

CORAM :

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.Nos.15115 to 15117 of 1998

A.Chandra Bose	... Petr. in W.P.No.15115/1998
S.Raju	... Petr. in W.P.No.15116/1998
D.Michael	... Petr. in W.P.No.15117/1998

vs.

The Executive Engineer,
Distribution,
Tamilnadu Electricity Board,
Kallidaikurichi,
Tirunelveli District.

... Respondent

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records relating to the impugned orders of the respondent in proceedings No.se.po./v/kallidai/ ke.me/e.ni.vu/ko.thanikkai/476a/98, No.se.po./v/kallidai/ke.me/e.ni.vu/ko.thanikkai/475/98 and No.se.po./v/kallidai/ke. me/e.ni.vu/ko.thanikkai/476/98, dated 06.07.1998 and quash the same.

For Petitioner in each WP : Mr.D.Hariparanthaman

For Respondent in each WP : Mrs.V.Yamuna Devi

C O M M O N O R D E R

The question involved in these matters being common, they are being decided by this common order.

2. Brief facts leading to the filing of these writ petitions are, as under:

(a) The petitioners, namely, A.Chandra Bose, S.Raju and D.Michael were working as watchmen in the office of the Junior Engineer, Nanguneri Rural, Tamil Nadu Electricity Board, which is under the control of the respondent. Pursuant to the direction of the Superintending Engineer, Tirunelveli Electricity Distribution Circle, by way of telegram, to terminate the services of the Security Guards employed on contract basis in Office/Stores on 30.04.1993 and to make local management in their place, the respondent passed an order dated 28.04.1993, temporarily diverting

the petitioners to the substores at Vaniankulam with effect from 30.04.1993 till the joining of the regular Security for watch and ward duty.

(b) According to the petitioners, they were served the copy of the order dated 28.04.1993 on 29.04.1993 and were sent on deputation to Vaniankulam on a temporary measure with assured payment of daily allowance. As assured by the department, the petitioners were paid daily allowance till they continued on deputation. While that being the position, the respondent passed an order dated 25.04.1994, permanently transferring and posting the petitioners, namely, A.Chandrabose and S.Raju in the Vaniankulam Civil PSC yard and withdrawing the petitioner, namely, D.Michael from deputation and retaining him in Nanguneri Rural itself. The petitioners namely, A.Chandra Bose, S.Raju, D.Michael, received a sum of Rs.10,536/-, Rs.6111/- and Rs.12,016/-, respectively, as daily allowance admissible under the rules during their period of deputation.

(c) While so, the respondent passed an order of recovery of the daily allowance paid to the petitioners during their period of deputation, on 06.07.1998, stating that the audit branch raised objection for the payment of daily allowance. Thereafter, the petitioners' Union wrote a letter dated 05.08.1998 to the Superintending Engineer, Tirunelveli Electricity Distribution Circle not to make any recovery of the amount paid as daily allowance to the petitioners during the period of deputation. Challenging the impugned orders of the respondent dated 06.07.1998, the petitioners have come up before this Court for the relief aforesaid.

3. In the counter affidavit, the respondent has stated as follows:

(a) The petitioners were deputed to Vaniankulam Stores for security purpose as Watchmen and they reported duty at Vaniankulam on 30.04.1993. The Superintending Engineer, Tirunelveli sent a Telegraphic order on 28.04.1993 directing the respondent to relieve the petitioners on 30.04.1993 A.N. by making local arrangements. Based on the instructions of the higher official, the services of the petitioners were withdrawn on 30.04.1993 A.N. by making local arrangements. In view of the relief of the petitioners, they were utilised in the P.S.C. Yard, Vaniankulam.

station to Vaniankulam and the said claim was objected to by the Audit. Based on the Audit Slip, recovery order was passed to recover the excess daily allowance.

(c) The services of the petitioners were utilised as Watchmen for security purpose at P.S.C. Yard, Vaniankulam from May 1993 to April 1994.

(d) The T.A. Bills were generally paid to the individuals subject to Audit objections if any, irrespective of orders issued by the competent authority. If any procedural flaw is found, such flaw has to be set right. Accordingly, the T.A. Bills were passed and paid to the petitioners and others were audited. As per the directions of the Audit Wing, recovery orders were passed. Therefore, the petitioners are liable to pay the excess amount paid to them by the Board.

In such circumstances, it is the case of the respondent that the claims of the petitioners are not tenable and that the writ petitions are liable to be dismissed.

4. Heard Mr.D.Hariparanthaman, learned counsel for the petitioners and Mrs.V.Yamuna Devi, learned counsel for the respondent.

5. Learned counsel for the petitioners submitted that the petitioners went on deputation only on the assurance of daily allowance given by the department. According to the learned counsel, the respondent is estopped from going back on their promise and they cannot validly pass the impugned order contrary to their promise particularly, when the petitioners have acted on their promise. Learned counsel contended that though both the respondent as well as the Superintending Engineer, TEDC wrote to the Board categorically expressing their view that the petitioners were paid daily allowance as admissible in rules, it is not fair on the part of the respondent to order recovery, which is violative of Article 14 of the Constitution of India. Learned counsel further contended that the impugned orders entail civil consequences, since no opportunity was given to the petitioners before passing of the same and if the recovery is made, the petitioners will be put to great hardship and difficulty.

6. In support of his contentions, learned counsel for the petitioner relied on a decision reported in 2007 (1) L.L.N. 806, in the case of N.S.Balasubramanian and others vs. Food Corporation of India, New Delhi and others, wherein this Court has held as under:

"18. The last submission of the learned senior counsel appearing for the petitioner is that even assuming without admitting that the respondents have stepped up the pay by wrong understanding of the circular as contended by the learned Additional

Advocate General appearing for the respondents/Corporation, petitioners have not misrepresented anything and the higher pay having been given, it is not open to the respondents to recover the same as held by the Supreme Court in the decision reported in Sahib Ram vs. State of Haryana (vide supra), and the decision of this Court reported in S.A.Kanthimathi vs. Director of School Education, Madras and others [2006 (3) L.L.N. 301] (vide supra). There is much force in the said contention. The learned Additional Advocate-General has no answer to the said submission. The recovery made by the respondents on the alleged ground of excess pay, even assuming it was erroneously fixed, is unsustainable in view of the fact that the petitioners never misrepresented and secured the order stepping up of their pay on par with the said Rajan C.Abraham. The above referred judgments of the Supreme Court and of this Court (decision of mine) equally apply to the facts of this case. Hence I hold all the points in favour of the petitioners and the petitioners are entitled to get refund of the recovered amount and arrears of pay."

7. When the aforesaid decision was taken on appeal, the First Bench of this Court in 2007 (1) L.L.N. 814 has held as under:

"11. We are of the view that the respondents' claim is similar to the claim of the petitioners before the Kerala High Court. When the petitioners before the Kerala High Court were paid the recovered amount pursuant to the order passed by the Kerala High Court, which has been confirmed by the Apex Court, the respondents herein are also entitled for the refund of the recovered amount and the arrears of pay. Even assuming that the appellant Corporation had stepped up the pay of the respondents on the wrong understanding of the circular, dated 9 July 1997, as contended by the learned counsel for the appellant Corporation, the respondents have not misrepresented anything and the higher pay having been given. It is not open to the appellant-Corporation to recover the amount as held by the Supreme Court in the decision in Sahib Ram vs. State of Haryana [1995 Suppl. S.C.C. 18], and the decision of this Court in S.A.Kanthimathi vs. Director of School Education, Madras and others [2006 [3] L.L.N. 301]. The undertaking given by the employees relates to house building advance, conveyance allowance, leave travel concession, etc., and cannot be used to justify unauthorised and illegal deductions made from the amounts payable to the employees."

8. In response, learned counsel for the respondent submitted that the petitioners claimed T.A. from the existing station to Vaniankulam; as a general practice, T.A. Bills were paid to the

individuals subject to Audit objections, if any, irrespective of the orders passed by the competent authority. Since the said claim was objected to by the Audit, based on the Audit Slip, recovery orders were passed to recover the excess daily allowance paid to the petitioners. Therefore, she contended that the claims of petitioners are not tenable and are liable to be dismissed.

9. Learned counsel for the respondent, to support her contentions, relied on a decision reported in (2000) 9 SCC 187 in the case of Union of India and others vs. Sujatha Vedachalam (Smt.) and another, wherein it was held as under:

"3. For the reasons stated in Comptroller & Auditor General of India vs. Farid Sattar decided today and decision of this Court in Special Leave Petition No.9324 of 1996 titled Chandan Saha vs. Union of India decided on 25.04.1996, the impugned orders and judgments under appeal are set aside. Both these appeals are allowed. There shall be no order as to costs. However, so far as recovery of excess pay paid to the respondents is concerned, the appellants may recover the said amount in easy instalments which may be spread over for fifteen years or till the date of retirement, whichever is earlier."

10. I have given careful consideration to the submissions made by the learned counsel on either side and have also given due consideration to the decisions relied on by them.

11. Admittedly, the petitioners namely, A.Chandra Bose, S.Raju and D.Michael were working as watchmen under the control of the respondent. Pursuant to the telegraphic communication dated 28.04.1993 from the Superintending Engineer, Tirunelveli to the respondent, to terminate the services of the Security Guards employed on contract basis in Offices/Stores and to make local management in their place, the respondent passed an order dated 28.04.1993, temporarily diverting the petitioners to the Substores at Vaniankulam with effect from 30.04.1993 till the joining of the regular Security for Watch and Ward duty. The petitioners were served the copy of the order dated 28.04.1993 on 29.04.1993 and were sent on deputation to Vaniankulam on a temporary basis with assured payment of daily allowance. As assured by the department, the petitioners were paid daily allowance till they continued on deputation.

12. It is seen that the petitioners, namely, A.Chandra Bose and S.Raju, who were temporarily diverted to Substores at Vaniankulam by the order of the respondent dated 28.04.1993 were permanently transferred and posted to the Vaniankulam PSC Yard by the proceedings of the respondent dated 25.04.1994 in Memo.ADS/A.4/F.Watchman/D.501/94 and were directed to report duty to the Asst. Executive Engineer/Civil/Vaniankulam; whereas the petitioner namely, D.Michael, who was also temporarily diverted to Substores at Vaniankulam by the order of the respondent dated

28.04.1993 was withdrawn from Vaniankulam and has been retained in Nanguneri Rural Section by the proceedings of the respondent dated 25.04.1994 in Memo.ADS/A.4/F.Watchman/D.502/94 with a direction to report duty to the Junior Engineer, Rural, Nanguneri, immediately.

13. Further, it is seen from the proceedings of the Executive Engineer, TNEB, Kallidaikurichi in Letter No.EE/D/KIC/ADS/A.3/D.No.148/95 dated 15.02.1995, addressed to the Superintending Engineer, (AADO/ADM-I), TKEDC, Tirunelveli-II that based on the instructions issued in the I.M. cited to relieve the Security Guards on 30.04.1993 AN by making local arrangements, the services of the Security Guards in (i) P.S.C. Yard, Valiankulam (ii) Sub Stores, Kallidaikurichi and (iii) Sub station, Melakallur, Veeravanallur, Moolaikaraipatti and V.K.Puram were withdrawn on 30.04.1993 AN by making local arrangements and in view of the relief, the services of the petitioners were utilised in PSC yard/Vaniankulam as the Stores is located in an isolated place. In the said proceedings, the Executive Engineer, the respondent herein made a request to the Superintending Engineer that the question of recovery of the TA claim preferred by the watchmen is not genuine. For clear understanding, it would be useful to extract the relevant portion of the proceedings, which reads as under:

"Therefore I submit that the question of Recovery of the TA claim preferred by the watchman is not a genuine one in the case of PSC yard/Vaniankulam based on the audit since the services of the watchman are essential considering the place of stores located in isolated area as well as the worth of materials available in the stores."

14. It is further seen that the Superintending Engineer, Tirunelveli Electricity Distribution Circle, Tirunelveli-11, vide his proceedings dated 23.12.1997 in Lr.No.SE/TEDC/ETM/AS/F.Audit/23/97, has requested the Chief Engineer, Distribution, Tirunelveli Region, Tirunelveli-11, not to recover the daily allowance paid to the petitioners, who were temporarily deputed to work at Vaniankulam Substores on the following grounds:

"(a) The staff have been temporarily diverted from the Kallidaikurichi division offices under emergency basis immediately on the withdrawal of contract security Guards from the Vaniankulam Stores, where materials worth more than 20 lakhs had been stored.

(b) The Vaniankulam stores is situated in an isolated area and the staff had to be diverted as temporarily basis with a hope of posting suitable substitutes which could not be done subsequently for want of hands. No allotment of watchman was received in the place of the contract security men suddenly withdrawn. However from 4/94 onwards they have been permanently posted.

(c) As these watchman are Last Grade employees, such a huge amount of recovery as proposed by the Board Office Audit Branch is unjustified. "

15. But, the request of the respondent to the Superintending Engineer, Tirunelveli was not taken into account, as the Board Office Audit Branch raised objections in the payment of daily allowance to the petitioners from May 1993 to April 1994. Ultimately, the respondent passed the impugned orders dated 06.07.1998, ordering recovery of the daily allowance paid to the petitioners.

16. A perusal of the entire proceedings and communications shows that the orders of recovery were not passed in accordance with the procedures contemplated in law. In my opinion, the impugned orders suffer from legal infirmities for the following reasons :

(i) Since the Board Office Audit Branch raised objections to the payment of Daily Allowance to the petitioners from May 1993 to April 1994 , impugned orders of recovery of Daily Allowance were passed without notice and the petitioners were not given an opportunity to submit their explanation as to why the Daily Allowance should not be recovered from them.

(ii) The petitioners agreed to go on deputation immediately as required by the department on assurance of payment of daily allowance. Though they were paid the daily allowance as promised, the question of recovery of daily allowance paid to them based on the audit is not proper, since the services of the watchmen are essential considering the isolated area in which the stores is located as well as the worth of materials available in the stores.

(iii) The orders of recovery passed by the respondent on the alleged ground of objections raised by the Board Office Audit Branch are unsustainable inasmuch as the respondent has deputed them to Vaniankulam assuring payment of daily allowance and it is also not the case of the respondent that the petitioners claimed allowance on their own and in the absence of any fault on their part, the recovery ordered to be made without the procedure contemplated is unsustainable;

(iv) As the petitioners are last grade employees, such a huge amount of recovery ordered by the respondent, based on the audit would cause great hardship to the petitioners.

17. Looking at any angle, firstly on the ground of procedural irregularity, secondly on the circumstances under which the

petitioners were sent on deputation and thirdly, the fact that the petitioners are last grade Board servants, the impugned orders of the respondent are vitiated by improper procedures and are in violation of the principles of natural justice. In such view of the matter, the impugned orders of recovery of daily allowance from the petitioners passed by the respondent on 06.07.1998 are liable to be quashed and they are accordingly quashed.

In fine, the writ petitions are allowed. No costs.

Abe

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Executive Engineer,
Distribution,
Tamilnadu Electricity Board,
Kallidaikurichi,
Tirunelveli District.

- One cc to Mr. D. Hariparanthaman, Advocate SR 73034
 - + One cc to Mr. M. Vaidyanathan, Advocate SR 73103
- SCD (co)
sg 14/12/07

order in
W.P.Nos.15115 to 15117 of 1998
07.12.2007

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